IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 602 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHESHBHAI H SHAH

Appearance:

1. Criminal Appeal No. 602 of 1990

PUBLIC PROSECUTOR for Petitioner No. 1

MR RD DAVE for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 09/11/2001

ORAL JUDGEMENT

1. The acquittal of the respondent of the offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 ("the Act" for short) recorded by

the learned Judicial Magistrate, First Class, Vyara vide judgement dated April 23, 1990 rendered in Criminal Case No. 2093 of 1988 is subject matter of challenge in the present appeal which is filed by the State of Gujarat under Section 378 of the Code of Criminal Procedure, 1973.

2. Mr. P.B. Jadav, who was Food Inspector had visited the shop of the respondent on March 18,1988 and purchased 375 gram of groundnut oil for the purpose of analysis and paid price of the same. After various formalities, one of the sample bottles was sent to the public analyst for analysis. The report of the public analyst indicated that the sample analysed was adulterated. Therefore, Mr.P.B.Jadav, had filed a complaint in the Court of learned Judicial Magistrate, First Class, Vyara against the respondent. On appreciation of evidence led by the Food Inspector, the learned Magistrate held that the uncorroborated evidence of the Food Inspector was not reliable for the purpose of convicting the respondent of the offence with which he was charged. The learned Counsel found that written consent to prosecute was granted by the competent Authority without application of mind and, therefore, was bad in law. The learned Magistrate noticed that a copy of the memorandum and specimen impression of the seal used to seal the packet were not sent separately to the public analyst, though required by Rule 18 of the Prevention of Food Adulteration Rules, 1955, and therefore, the respondent was entitled to benefit of doubt. In view of the above referred to conslusions, the learned Magistrate has acquitted the respondent by judgement dated April 23, 1990 giving rise to the present appeal.

3. Mr. D.P. Joshi, learned Counsel for the appellant pleaded that all the relevant materials were placed before the Authority who had granted written consent to prosecute and, therefore, written consent to prosecute could not have been invalidated on the ground that it suffers from the vice of non application of mind. The learned Counsel contented that it is not necessary that the evidence of the Food Inspector should be corroborate any other independent evidence and, therefore, the respondent could not have been acquitted on the ground that the evidence of Food Inspector was not corroborated by any other evidence on record. What was claimed was that there is no breach of Rule 18 of the Rules and, therefore, no benefit could have been granted to the respondent on the ground that mandatory rule was not complied with by the Food Inspector. According to

the learned Counsel for the State Government, the reasons assigned by the learned Magistrate for acquitting the respondent are not well founded and, therefore, the appeal should be accepted.

4. Mr. R.D. Dave, learned Counsel for the respondent urged that in the present case, the panch witness who is not examined to support the evidence of Food Inspector, and as the panchnama prepared while taking sample for analysis is not on record, the learned Magistrate did not commit any error in not placing reliance on uncorroborated testimony of the Food Inspector. According to the learned Counsel for the respondent, written consent to prosecute was granted without taking into consideration the relevant facts and, therefore, the same is rightly invalidated by the learned Magistrate. What was claimed was that the Food Inspector had not sent a copy of the memorandum and specimen impression of the seal used to seal the packet separately in a sealed packet to the public analyst, and he having committed breach of Rule 18 of the Rules, acquittal of the respondent should be upheld. It was emphasised that, the evidence of Food Inspector establishes that the utensil in which the sample for analysis was taken was used earlier and that three bottles in which the sample was thereafter taken were also used earlier and were lying in the office of the Food Inspector uncleaned and as there is breach of Rule 14 of the Rules the appeal should be dismissed.

5. I have considered the submissions advanced at the bar and reappreciated the whole evidence on record. The testimony of Food Inspector establishes that all the relevant materials were placed before the competent Authority who had granted written consent to prosecute. Therefore, the written consent to prosecute could not have been invalidated on the ground of non application of mind. In SURESH H. RAJPUT AND OTHERS Vs. BHARTIBEN PRAVINBHAI SONI AND OTHERS reported in (1996) 7 Supreme Court Case, 199, the Supreme Court has held that where the analysis report and other pertinent materials in connection therewith have been placed before the sanctioning authority and after going through the material, sanction is granted, the sanction to prosecute cannot be treated as illegal because at that stage it is not for the sanctioning authority to weigh the pros and cons and then to find whether the case would end in conviction or acquittal or the adulteration was abnormal or marginal. Applying the principle laid down by the Supreme Court in the above quoted decision to the facts of the present case, I am of the opinion that the written

consent given by the competent Authority to prosecute is valid and the finding recorded by the learned Magistrate to the effect that the same is bad in law is hereby set-aside.

6. However, there is some force in the contention that the deposition of Food Inspector which is not corroborated by other evidence on record does not inspire confidence and, therefore, should not be acted upon. It is relevant to notice that, according to the Food Inspector he had kept one panch witness present at the time of taking the sample for analysis but the panch witness could not be examined in the case as he had expired before the commencement of trial. The cross examination of the Food Inspector establishes that the defence of the respondent was that the panchnama was prepared by the Food Inspector at some other place. The Food Inspector has failed to produce the panchnama prepared at the time of taking sample, on the record of the case. Under the circumstances, I am of the opinion that the learned Magistrate who had advantage of observing demeanour of the witness has rightly refused to act upon uncorroborated testimony of the Food Inspector. The evidence of the Food Inspector does not establishes that a copy of the memorandum and specimen impression of the seal used to seal the packet were sent separately in a sealed packet to the public analyst as required by Rule 18 of the Rules and, therefore, in my view, the learned Magistrate has rightly concluded that the Food Inspector had committed breach of provisions of Rule 18 of the Rules. In MOHANLAL MAGANLAL SINDHI & ORS. Vs. STATE OF GUJARAT & ORS. reported in XVIII G.L.R. 1002 a view has been taken that if it is found that Rule 18 of the Rules is committed breach of then there can be no doubt that the protection given to the accused is rendered illusory and the mandatory requirement of Rule 18 is breached. What is held in the said decision is that on establishment of the fact that provisions of Rule 18 were committed breach of, the accused would be entitled to acquittal. Therefore, in my view the learned Judge rightly held that the respondent was entitled to acquittal, as the Food Inspector had committed breach of provisions of Rule 18 of the Rules.

7. Further, the evidence of Food Inspector shows that he had used the same utensil for the purpose of collecting groundnut oil sample from the respondent which was used by him on earlier occasion, and that after dividing sample he had taken the sample in the three bottles which were also used earlier. His evidence does not establish satisfactorily that the sample of groundnut

oil was taken in clean dry bottles or jar and as the Food Inspector has committed breach of provisions of Rule 14 of the Rules, I am of the opinion that the respondent is entitled to acquital on thies additional ground. It is relevant to notice that the standards prescribed for groundnut oil are to be found in entry No. 17.03 as given in Appendix-B to the Prevention of Food Adulteration Rules, 1955. The report of the public analyst indicates that Frefatty acid as oleic acid was found to be 5.8% though the maximum limit prescribed was 3.0%. However, by notification dated April 8, 1988 issued by the Ministry of Health and Family Welfare the Prevention of Food Adulteration (3rd Amendment Rules, 1988) have been published wherein it is prescribed that frefatty acids as oleic acid value should not be more than 6.0%. As observed earlier, the sample was taken on April 18,1988 whereas the notification amending the Prevention of Food Adulteration Rules was issued on April 8, 1988. The appeal which was filed in the year 1990 has been taken up for hearing after about eleven years. Though the offences punishable under the Prevention of Food Adulteration Act should be viewed seriously, because the offences have the deletirious effect playing havoc with the health and well being of the large segment of the society, I am of the view that in view of the delay of eleven years in hearing the appeal coupled with the fact that there was marginal adulteration which according to amended provision is not adulteration at all would certainly be a disincentive to interfere with the order of acquittal. This is an acquittal appeal and the Court would be slow to interfere with the same if two views of the matter are possible. The learned Counsel for the State has failed to dislodge the reasons given by the learned Magistrate for acquitting the respondent . Under the circumstances, I am of the opinion that the appeal cannot be entertained and is liable to be dismissed.

For the foregoing reasons, appeal fails and is dismissed.

(J.M. PANCHAL,J.)

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